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Supreme Court of the United States

OCTOBER TERM, 1931.

Number 33

ADVANCE-RUMELY THRESHER COMPANY, INC., A CORPORATION,
Appellant,

vs.

A. M. JACKSON,
Appellee.

JURISDICTIONAL STATEMENT.

MATTHEW W. MURPHY,
HOWARD G. FULLER,
JOSEPH M. POWERS,
Attorneys for Appellant,
Fargo, North Dakota.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

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Supreme Court of the United States

OCTOBER TERM, 1931.

Number 849.

ADVANCE-RUMELY THRESHER COMPANY, INC., A CORPORATION,
Appellant,

vs.

A. M. JACKSON,
Appellee.

JURISDICTIONAL STATEMENT.

This appeal is taken to review and reverse a final judgment against appellant rendered by the Supreme Court of North Dakota, said court being the highest court in that state in which a decision could be had of the subject in controversy. As the printed record in this court has not been received numbers in parentheses will have reference to the paging of typewritten transcript as certified from the lower court.

CHRONOLOGY.

The judgment appealed from (38) was rendered and entered in the Supreme Court of North Dakota March 25, 1932.

Appellant's petition for appeal (40) accompanied by its assignments of error (43) and prayer for reversal were presented to the Chief Justice of the Supreme Court of the said state on March 30th, 1932.

On the last mentioned date the Chief Justice of said court signed the usual order allowing said appeal (46) and directing that the record herein be certified and transmitted as required by law to the Supreme Court of the United States.

On the same date the aforesaid Chief Justice approved the bond and undertaking on appeal presented by appellant in the sum of two thousand ($2,000.00) dollars and signed an order allowing such bond as a supersedeas.

On or about the same date the aforesaid Chief Justice signed a citation, addressed to the appellee, in the usual form, service whereof was duly made on counsel for appellee and the original citation (51) with admission of service, was returned to the clerk of the Supreme Court of North Dakota.

The record on said appeal was certified (54) and transmitted to the Supreme Court of the United States within thirty days from the date of the order allowing the appeal.

Said record was filed in the office of the clerk of the Supreme Court of the United States; the appeal was docketed April 4, 1932, on the calendar for the October, 1931, term, and was assigned number 849 on said calendar.

STATEMENT.

There was drawn in question by the final judgment of the Supreme Court of North Dakota in this case the validity of a statute of that state on the ground of its being repugnant to the Constitution of the United States (more particularly the Fourteenth Amendment) and the decision was in favor of the validity of said statute.

The statute in question (Chapter 238 of the *Laws of 1919*, of the state of North Dakota) assumes, or declares the existence of, an implied or statutory warranty of fitness upon the sale of the commodities, including thresher-combines,

which are described in the statute; it provides for the right of trial or test in the buyer; the right of rescission if the article does not prove fit for the purpose of its purchase; and declares any contract to the contrary to be void and against public policy.

The Federal question arose, here, in a suit by appellee against appellant instituted according to local usage in the District Court of Hettinger county, North Dakota. The action was for the recovery of certain promissory notes given by the plaintiff, purchaser, to the defendant, seller, for a thresher-combine, and the cause was based upon an alleged rescission which had taken place in accordance with the above mentioned statute (2). The defendant, appellant here, pleaded that a waiver of all warranties and of remedies for breach of warranty was a part of the contract of purchase; that the statute, aforesaid, was void under the Fourteenth Amendment to the Constitution of the United States (7, 8).

The contract, aforesaid, was held by the District Court (15) and by the Supreme Court (23) to be void under the above statute; the statute was held to be valid under the Federal Constitution; and plaintiff was given judgment as demanded.

The appellant is engaged in the sale of the commodities, mentioned in the statute, in the state of North Dakota. The effect of the statute, as applied to appellant in the instant case, is to deny appellant, and its purchaser, the right to bargain and contract whether or not there shall be a warranty of fitness in the sale, or a special warranty in lieu of the implied warranty of fitness.

Under this statute the warranty of fitness (or, rather, a remedy of rescission for breach of the warranty of fitness) must inhere in every sale regardless of the character of the article sold, the desire and intention of the parties to other-

wise contract, the ability of the buyer to protect himself from fraud, or the price to be paid. No buyer, for a consideration or otherwise, may waive the right to rescind which is thus granted him by the statute.

The obvious result is that appellant's right to conduct the business of selling the commodities mentioned in the statute, and its right to make a sale of any commodity, is conditioned upon appellant's consent to a compulsory contract clause, in obedience to which appellant must relinquish its right of due purpose of law, equal protection of the law and the liberty of contract to it guaranteed by the Federal Constitution.

The value of appellant's business and of appellant's commodities, on hand for sale, is in the right to make sales of those commodities. By the statute the appellant cannot sell. It can but sell on trial. The value of every contract of purchase, for which appellant may exchange its commodity, must be gauged by the terms and conditions of contract. By the statute the enforceability of the contract of purchase is made contingent. Every contract of sale is burdened with an uncertainty which impairs its value.

The act is so arbitrary a usurpation of the privilege of contract, in an unpublic matter, that it is an infringement of appellant's liberty of contract. The classification of articles, the sale of which is so restricted and the class of cases in which the statutory remedy is made applicable, is so arbitrary and unreasonable that appellant is deprived of a protection of the law in equality with others similarly situated.

It will be demonstrated by brief (in accordance with facts of common knowledge and of which the court must take judicial notice) that the public evil which this statute is

intended to cure is the harm (financial loss) occasioned by *fraudulent sales* to the individual buyers of the described articles; that the unfitness of the article cannot be lawfully made conclusive proof of fraud by the legislature; that whether there is fraud must depend upon the facts of each case; that a deprivation of seller's right to prove the absence of fraud is not due process; that it is not necessary to strike down all sales of articles which prove unfit to cure the evil of fraud in those contracts of sale which were brought about by fraud, breach of trust, or other imposition on the buyer; that under this statute persons are given a financial remedial relief for fraud who suffer no fraud and others, whose conduct is not wrongful, are subjected to financial loss or penalty for fraud.

The remedy given by the statute is neither adequate nor reasonable. The legislative judgment expressed by the statute is without possibility of rational foundation, if viewed in the light of the legislative purpose for which it was enacted.

According to decisions of the North Dakota Supreme Court the public interest in this legislation grows out of losses caused to buyers by fraudulent sales. According to this statute the legislative remedy is to be a procedural court remedy, viz., rescission of sale. But the right of rescission given by the statute is not for fraud, requires no proof of fraud, and allows relief against those not guilty of fraud.

The appellant understands that a law is void under the Fourteenth Amendment when, by facts of common or judicial knowledge, it is made to affirmatively appear that the legislation, designed to remedy a particular evil, is not an appropriate remedy for that evil; that the law is void when it is thus shown that it has no rational basis in public benefit for its existence and that it imposes an arbitrary and unreason-

able burden upon the liberty of contract of those whose conduct in no way contributes to the ailment sought to be cured.

O'Gorman & Young, Inc., vs. Hartford Fire Insurance Co. (U. S.), 75 L. Ed. 162.

Hardware Dealers, etc., Co. vs. Glidden Co. (U. S.), 76 L. Ed. 65.

Packer Corporation vs. Utah (U. S.), 76 L. Ed. 351.

PROCEDURE IN THE STATE COURTS.

The plaintiff, appellee in this court, commenced the action in the District Court of Hettinger county, North Dakota. The complaint referred to, and was based upon, Chapter 238 of the *Session Laws of 1919,* above mentioned. The action was for recovery of certain promissory notes given by plaintiff to defendant, *i. e.,* for the recovery of consideration paid on the purchase of a thresher-combine. The sale, the subsequent trial of the combine, its unfitness for the purpose of its purchase, and the fact of rescission was alleged.

The defendant pleaded, by way of answer, that the statute above mentioned was void under the Fourteenth Amendment to the Federal Constitution; that the contract of sale, in writing, included a provision by which the purchaser expressly waived all warranties, express, implied or statutory, including all warranties of fitness, and all remedies for breach of warranty.

The plaintiff demurred to the answer. The demurrer was tried in the District Court. The District Court entered its order sustaining the demurrer and expressly held that the contract, for the waiver of warranties, etc., pleaded in the answer, was void under the statute, and that the statute was valid under the Fourteenth Amendment.

The defendant then stood upon its answer. The plaintiff

moved for judgment on the pleadings. Final judgment was entered in favor of plaintiff and against the defendant as prayed for in the complaint.

The judgment of the District Court of Hettinger county of North Dakota was entered December 10th, 1931.

An appeal from this judgment was duly taken to the Supreme Court of North Dakota. The final judgment of the Supreme Court of North Dakota, affirming the judgment of the trial court, was entered March 25, 1932.

The only question presented by the pleadings or decided by either the trial or appellate court of North Dakota was the single question of law whether the statute above mentioned was invalid on account of the provisions of the Fourteenth Amendment to the Constitution of the United States.

JURISDICTIONAL STATEMENT.

The statutory provisions sustaining the jurisdiction on this appeal are as follows:

Act of Feb. 13th, 1925, Ch. 229, 43 Stat. 936.

U. S. Code, Title 28, Sec. 344 (a).

Judicial Code, Sec. 237a, as amended by Act of Feb. 13, 1925.

As thus shown, all the proceedings with respect to perfecting this appeal were had within thirty days of the rendition of the judgment appealed from; the record on appeal was duly transmitted and the appeal docketed in this case within that time.

The nature of the case and the ruling of the court below has already been indicated and the case is thus brought within the statutory provision as one where there was brought in question, by the controversy, the validity of a state statute on the ground of its repugnance to the Constitution of the

United States, and the decision of the highest court of the state in which a decision in the suit could be had was in favor of the statute's validity, and expressed in final judgment of that court.

It is also thus made to appear that there is in the record no non-federal question.

The following among other cases sustain the jurisdiction of this court:

Merchants National Bank vs. Richmond, 256 U. S. 635, 65 L. Ed. 1135.

Eureka Pipe Line Co. vs. Hallaman, 257 U. S. 265, 66 L. Ed. 227.

Dahnke-Walker Co. vs. Bondurant, 257 U. S. 282, 66 L. Ed. 239.

Dorchy vs. Kensos, 272 U. S. 306, 71 L. Ed. 248.

King Mfg. Co. vs. Augusta, 277 U. S. 100, 73 L. Ed. 801.

Respectfully submitted,

M. W. MURPHY,
HOWARD G. FULLER,
J. M. POWERS,
Counsel for Appellant,
Fargo, North Dakota.